

Message Text

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ORIGIN EB-08

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DRAFTED BY EB/OA:MHSTYLES:VLV
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FM SECSTATE WASHDC
TO AMEMBASSY TOKYO IMMEDIATE

C O N F I D E N T I A L STATE 061352

E.O. 11652: GDS

TAGS: EAIR, JA

SUBJECT: CIVAIR - CAB PART 213 ORDER

1. ON MARCH 8, JAPANESE EMBASSY (MUKAIYAMA) DELIVERED
FOLLOWING NOTE TO STYLES (EB/OA):

QUOTE. THE EMBASSY OF JAPAN PRESENTS ITS COMPLIMENTS TO THE
DEPARTMENT OF STATE AND, WITH REFERENCE TO THE DECISION OF
THE CIVIL AERONAUTICS BOARD, DATED MARCH 3, 1978, CONCERN-
ING JAPAN AIR LINES' OPERATION TO AND FROM THE UNITED
STATES, HAS THE HONOR TO STATE, UNDER INSTRUCTIONS, AS
FOLLOWS:

1. AS WAS ELABORATED IN THE JAPANESE NOTES ON JANUARY 18
AND JANUARY 27, WHICH THE JAPANESE MINISTRY OF FOREIGN
AFFAIRS SENT TO THE EMBASSY OF THE UNITED STATES OF AMERICA
IN TOKYO, THE JAPANESE GOVERNMENT IS OF THE VIEW THAT THE
FLYING TIGER'S APPLICATION TO EXTEND FLIGHTS TO SINGAPORE
SHOULD BE TAKEN UP AS A PART OF THE ISSUE OF EXTENSION OF
THE AGREED MINUTE OF JULY 1977, SINCE SINGAPORE IS A NEW
POINT TO FLYING TIGER, AN ADDITION OF A NEW POINT BEING
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NOT, IN OUR UNDERSTANDING, TO BE APPROVED SO LONG AS THE
SAID AGREED MINUTE IS IN FORCE. THE QUESTION OF EXTENDING
THE SAID AGREED MINUTE HAS BEEN A SUBJECT OF CONSULTATIONS

BETWEEN OUR TWO GOVERNMENTS SINCE DECEMBER 1977, AND MOST
RECENTLY AT THE CONSULTATIONS HELD IN TOKYO BETWEEN
FEBRUARY 20-24, 1978, WHERE THE JAPANESE GOVERNMENT, FOR

ITS PART, ENDEAVORED TO SOLVE THE ISSUE BY PRESENTING A PROPOSAL WHICH THE UNITED STATES GOVERNMENT REFUSED TO CONCUR. IT IS THE UNDERSTANDING OF THE JAPANESE GOVERNMENT THAT CONSULTATIONS ARE STILL IN PROCESS IN THE SENSE THAT THE ISSUE IS TO BE DISCUSSED IN THE COMING CONSULTATIONS SCHEDULED TO START IN THE WEEK OF MARCH 13, AND IT HOPES THAT THE ISSUE WOULD BE RESOLVED IN A MUTUALLY ACCEPTABLE MANNER DURING THAT CONSULTATIONS. ACCORDINGLY, THERE COULD NOT BE A CASE OF ANY VIOLATION OF THE CIVIL AIR TRANSPORT AGREEMENT BETWEEN THE TWO COUNTRIES ON THE PART OF THE JAPANESE GOVERNMENT PERTAINING TO THE APPLICATION OF FLYING TIGER PENDING THE SETTLEMENT OF THE EXTENSION PROBLEM OF THE AGREED MINUTE.

IT IS, THEREFORE, TO BE STRONGLY PROTESTED THAT THE U.S. CIVIL AERONAUTICS BOARD HAS TAKEN A PRECIPITOUS AND UNREASONABLE ACTION IN ORDERING JAPAN AIR LINES TO REDUCE ITS SERVICES BETWEEN JAPAN AND THE UNITED STATES.

2. THE JAPANESE GOVERNMENT WISHES TO URGE THE UNITED STATES GOVERNMENT TO TAKE NECESSARY MEASURES TO DISAPPROVE THE CAB'S ORDER. FAILURE TO TAKE SUCH ACTION WOULD NOT ONLY GIVE MOST DAMAGING EFFECTS ON THE OUTCOME OF THE COMING CONSULTATIONS WHERE BOTH GOVERNMENTS SHOULD, AS HAS BEEN EMPHASIZED, EXERT UTMOST EFFORTS TO REACH A MUTUALLY SATISFACTORY CONCLUSION ON THE CIVIL AIR NEGOTIATION, BUT
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ALSO COMPEL THE JAPANESE GOVERNMENT TO TAKE A RETALIATORY ACTION AGAINST THE SERVICES BY THE U.S. AIRLINES.
UNQUOTE.

2. FOLLOWING POINTS WERE MADE ORALLY:

A. ALTHOUGH CAB DECISION SENT TO PRESIDENT ON FRIDAY, MARCH 3, GOJ NOT ADVISED UNTIL TUESDAY, MARCH 7. STYLES RESPONDED THAT ORDER SENT TO PRESIDENT AT END OF DAY FRIDAY, DEPARTMENT RECEIVED COPY MONDAY, KATZ ATTEMPTED CALL FUKADA ON MONDAY, AND THAT WE DID NOT FEEL WE HAD BEEN TARDY.

B. DISCLOSURE OF CONTENTS OF CONFIDENTIAL 1959 AGREED MINUTE IN CAB ORDER WAS CONTRARY DIPLOMATIC PRACTICE, SHOWED BAD FAITH, AND SHOULD BE DELETED FROM ORDER. STYLES REPLIED THAT DELETION NOT POSSIBLE SINCE ORDER ALREADY MADE PUBLIC ON TUESDAY, IN PART IN ORDER TO PERMIT COURT OF APPEALS TO HAVE ALL RELEVANT INFORMATION BEFORE IT.

C. GOJ DISAGREED WITH CAB'S CHARACTERIZING FTL'S CARRIAGE OF US-SINGAPORE TRAFFIC AS THIRD/FOURTH FREEDOM

WHILE JAL'S WAS FIFTH. IN JAPANESE VIEW, FTL CARRIAGE OF JAPAN-SINGAPORE TRAFFIC WAS FIFTH AND JAL'S CARRIAGE OF SINGAPORE-US WAS THIRD/FOURTH. THEREFORE, WHEN CAB RETALIATED AGAINST JAL'S THIRD/FOURTH FREEDOM, USG WOULD BE IN VIOLATION OF AGREEMENT (SIC). STYLES SAID THIS DIFFERENCE OF INTERPRETATION ON FREEDOMS WAS NOT CENTRAL TO CAB'S CASE.

3. WITH REGARD GOJ REQUEST THAT PRESIDENT DISAPPROVE CAB ORDER, STYLES SAID THAT IT WAS NOT POSSIBLE TO INDICATE ACTION PRESIDENT WOULD TAKE, BUT HE HAD THREE BROAD OPTIONS, NAMELY, TAKE NO ACTION IN WHICH ORDER WOULD BE ISSUED ON MARCH 13 TO TAKE EFFECT 30 DAYS LATER, DISAPPROVE ORDER, OR STAY THE ORDER. LATTER OPTION WOULD IN CONFIDENTIAL

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EFFECT MEAN PRESIDENT WOULD PLACE A HOLD ON ORDER.

4. FYI. DEPARTMENT HAS RECOMMENDED THAT PRESIDENT STAY THE ORDER AND THAT HE CONSIDER REMOVING STAY IF NEGOTIATIONS DO NOT RESOLVE THE ISSUE. END FYI.

5. RE TOKYO 3834, EMBASSY IS CORRECT. VANCE

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